

REMARKS

Claims 1 to 27 are pending in the present application, with Claims 1, 11, 17 and 18 amended and Claims 20 to 27 newly added.

Claims 20 to 27 have been added to further clarify the present invention, and are believed to add no new matter.

Claims 1 to 17 and 19 have been rejected under 35 U.S.C. § 112, second paragraph, for the grounds that the terms "dispenser orifice" and "pivot axis" lack antecedent basis. In response, Claims 1, 11, 17 and 18 have been amended to provide proper antecedent basis. Accordingly, withdrawal of the § 112, second paragraph, rejection is respectfully requested.

Claims 1, 2, 4 to 11, 13, 14 and 16 to 19 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,358,146 (Stull). The rejection is respectfully traversed.

The present invention, as defined in independent Claim 1, is directed to a receptacle containing a cosmetic or care substance including a dispenser comprising two parts. The first part has a first surface, in which the first part is attached to a receptacle. The second part has a second surface, whereby a dispenser opening orifice is formed between the first and second surfaces. In addition, the second part is adapted for rotational mounting relative to the first part, in which the second part is capable of rotating between a dispensing position and a closed position. The dispensing position is capable of permitting a substance contained in the receptacle to exit or leave the device through the dispenser orifice. The dispenser orifice opens out directly to the environment. The closed position is capable of preventing a substance contained in the receptacle from passing from the receptacle to the dispenser orifice.

The present invention, as defined in independent Claim 17, is directed to a device having two parts. The first part has a first surface, in which the first part is attached to a receptacle. The second part has a second surface, whereby a dispenser opening orifice is formed between the first and second surfaces. In addition, the second part is adapted for rotational mounting relative to the first part, in which the second part is capable of rotating between a dispensing position and a closed position. The dispensing position is capable of permitting a substance contained in the receptacle to exit or leave the device through the dispenser orifice. The dispenser orifice opens out directly to the environment. The closed position is capable of preventing a substance contained in the receptacle from passing from the receptacle to the dispenser orifice. The first and second parts further comprise first and second portions. The first and second portions comprise first and second outer surfaces, in which one of the first and second outer surfaces is the continuation of the other of first and second outer surfaces.

The present invention, as defined in independent Claim 18, is directed to a device containing a cosmetic or care substance including a dispenser comprising two parts. The first part has a first surface, in which the first part is adapted for attachment to a receptacle. The second part has a second surface, whereby a dispenser opening orifice is formed between the first and second parts. In addition, the second part is adapted for rotational mounting relative to the first part, in which the second part is capable of rotating between a dispensing position and a closed position. The dispensing position is capable of permitting a substance contained in the receptacle to exit or leave the device through the dispenser orifice. The dispenser orifice opens out directly to the

environment. The closed position is prevents a substance contained in the receptacle from passing from the receptacle to the dispenser orifice. The first and second parts are rotatable around the other of the first and second surfaces.

The present invention, as defined in independent Claim 19, is directed to a device containing a cosmetic or care substance including a dispenser comprising two parts. The first part includes a front surface and an axis of rotation. The first part is attached to a receptacle having a longitudinal axis. The second part includes a second surface, whereby a dispenser opening orifice is formed between the first and second surfaces. In addition, the second part is adapted for rotational mounting relative to the axis of rotation, in which the second part is capable of rotating between a dispensing position and a closed position. The dispensing position is capable of permitting a substance contained in the receptacle to exit or leave the device through the dispenser orifice. The dispenser orifice opens out directly to the environment. The closed position is capable of preventing a substance contained in the receptacle from passing from the receptacle to the dispenser orifice. The axis of rotation is sloped relative to the longitudinal axis.

One common feature of the receptacle or devices described in independent Claims 1 and 17 to 19 is that the dispenser orifice, which opens out directly to the environment, is formed between the first part and the second part or between surfaces of the first part and the second part. As described on page 2, lines 1 to 11, and page 3, lines 23 to 28, the size and shape of the dispenser orifice may be adjusted without the requirement of extra parts. Therefore, a dispensing device with such a feature could be made to leave a sufficiently narrow clearance for the dispenser orifice to prevent sand from penetrating the inside of the device at a lower cost than those

dispenser devices that utilize or require extra parts, such as check valves or elastomers, to keep out sand.

Judging from the Office Action, the Patent Office has apparently equated Stull's recesses 30 and 36 with the dispenser orifice of the present invention. However, as shown in Figures 4 to 9 and explained on column 4, line 55 to column 5, line 16 of Stull, recesses 30 and 36 do not open out to the environment. Instead, the part that opens out to the environment is the discharge orifice 38, which is not formed between the surfaces of first and second parts. Instead, as described in column 5, lines 1 to 3, the discharge orifice 38 is formed between two surfaces of the cap part 24 or more precisely, as a part of the upper transverse wall 40 of the cap part 24. Although Stull's dispenser is made of two molded parts, these two parts together do not form a dispenser orifice which opens out to the environment. Therefore, Stull does not disclose the present invention, as defined in Claims 1 and 17 to 19.

Accordingly, withdrawal of the § 102(b) rejection is respectfully requested.

Claims 3, 12 and 15 have been rejected under 35 U.S.C. § 103(a) over Stull. The rejection is respectfully traversed.

Claim 3 depends from Claim 1 and further describes the receptacle of Claim 1 having the distance between the first and second surfaces be less than 0.5 mm.

Claim 12 depends from Claim 1 and further describes the receptacle of Claim 1 having the first and second parts configured so as to pass from the closed position to the dispensing position by rotating the second part through a half turn.

Claim 15 depends from Claim 1 and further describes a receptacle of Claim 1 having the first and second parts made of plastic material of different colors.

To reiterate the foregoing, Stull does not disclose the present invention described in Claims 1 and 17 to 19. In particular, Stull does not disclose a receptacle or device comprising a dispenser orifice formed between the surfaces of a first part and a second part that opens out directly to the environment.

The only part of Stull's dispenser seen to open out to the environment is its discharge orifice 38. However, the discharge orifice 38 is not formed between two parts, but is instead formed as a part of a cap 24 for Stull's dispenser.

Nevertheless, Stull does not suggest to or motivate a person of ordinary skill in the art to adjust Stull's dispenser so that its discharge orifice 38 is formed between two parts, or the surfaces thereof.

First, as set forth in column 2, lines 38 to 43, one object in Stull is to provide a simple cap closure of a single component. To form a discharge orifice 38, which opens out to the environment, between two parts would undermine this object because the cap 24 would no longer be a single component.

Also, as explained above, one advantage of having a dispenser orifice formed between two parts, or the surfaces thereof, is that spacing between the two parts, or the surfaces thereof, may be adjusted so that it is narrow enough to prevent sand from penetrating the inside of the device. This allows for the prevention of unwanted particles from entering the device without the utilization of extra parts.

However, Stull is silent as to the size and shape of its discharge orifice 38 and any feature that prevents outside particles, such as sand, from entering its dispensing device.

Newly added Claims 20 to 27 depend from independent Claims 1 and 17 to 19. Therefore, for the same reasons given above, these claims are also believed patentable over Stull.

In view of the foregoing, withdrawal of the §103(a) rejection is respectfully requested.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

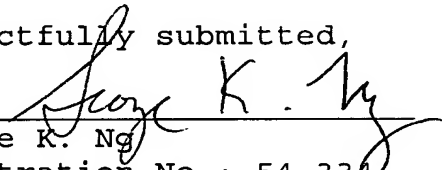
If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 28, 2005

Respectfully submitted,

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